

115

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### COMMITTEE ACTIVITY

Committee AL 001 - Eminent Domain and Land Use  
Legal Resources Group, Highway Research Board

EMINENT DOMAIN AND LAND USE  
MEMORANDUM

### VALUATION CHANGES RESULTING FROM INFLUENCE OF PUBLIC IMPROVEMENTS

Abstracted from a report submitted under ongoing NCHRP Project 20-6, "Right-of-Way and Legal Problems Arising Out of Highway Programs," for which the Highway Research Board is the agency conducting the research. The report was prepared by John C. Vance, HRB Counsel for Legal Research, principal investigator, and Hayes T. O'Brien, Research Attorney, serving under the Special Projects Area of the Board.

The National Cooperative Highway Research Program report on the effect a planned public improvement has on the value of lands to be used for that improvement discusses relevant cases and offers a suggested bill to abolish inconsistencies in the treatment of valuation of condemned lands. The full report is published as NCHRP's Research Results Digest No. 11, October 1969 and is available from the Highway Research Board, 2101 Constitution Avenue, Washington, D.C. 20418.

The question of whether to allow or disallow valuation effects of public improvements in right-of-way acquisition has been a problem for many years. There appears to be no uniform means of treating the problem, nor is there a uniform approach taken by the various State courts and highway departments.

In highway construction, there is an inevitable lapse of time between the selection of the route alignment, design of the road by the State, approval of alignment and design by the Federal Highway Administration, and the actual condemnation of lands for the right-of-way. In some instances this lapse may cover a period of several years. Frequently, there is widespread public knowledge of the project. In the interval after public awareness of the project, or official commitment by the State and the Federal Highway Administration to the project, lands lying along and adjacent to the designated right-of-way may appreciate or depreciate in value.



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In appraising lands condemned for a public project, whether to allow or disallow enhancement in value due to the improvements, or to include or exclude depreciation caused by the improvement, is a problem which has not been definitively handled by the courts. Decisions reflect not only a lack of uniformity of result, but also, in many instances, a lack of clarity of approach. Facts are insufficiently stated and the underlying rationale is vague, according to the NCHRP report.

Enhancement in value. Arguments both for and against the allowance of enhancement in value may be found. On one hand, where lands in the vicinity of a public improvement are enhanced in value by reason thereof, it is inequitable that the owners of lands taken for the improvement be denied the increment in value which inures to the benefits of the owners of vicinal lands not taken. On the other hand, the public should not be required to pay the owners of the lands an advanced value as well as pay for the improvement which causes the value increase. The owners of lands adjacent to the improvement enjoy benefits therefrom, but the owners of lands taken for the improvement cannot enjoy such benefits, and hence are not entitled to the increment in value represented by such benefits inuring to the land, but to speculation as to what the government might pay therefor.

There are five classifications of cases dealing with enhancement of land value due to the planned public improvement. Cases in all five categories are analyzed and discussed in the report.

One line of cases, uniformly denying enhancement, proceeds on the theory that a landowner is not entitled to any increment in value attributable to the improvement if it is known or reasonably probable from the outset thereof that the lands will be taken for the improvement.

Another line of cases treats the situation where the original project is subsequently enlarged and the question is presented as to whether the enlargement was a foreseeable extension of the original project. If so, enhancement will be denied; but if the enlargement constituted an independent project not conceived as part of the original improvement, enhancement will be allowed.

A third line of cases supports the proposition that enhancement in value due to the improvement will be disallowed under any circumstances and without regard to whether it was known or reasonably probable from the outset of the project that the lands would be taken.

A fourth line of cases holds that enhancement in value will be permitted under any circumstances and without regard to whether it was known or reasonably probable from the outset of the project that the lands would be taken. These cases are a distinct minority.

A fifth line of cases deals with the construction of statutory and constitutional provisions as affecting or determining the allowance or disallowance of enhancement. Some State constitutions provide a statute law to the effect that valuation in eminent domain shall be determined "irrespective" of benefits from or enhancement due to the public improvement for which the lands are taken. However, the meaning of the word "irrespective" in this context is ambiguous, and courts dealing with the same statute have reached opposite decisions. In some cases the construction given to the word leads to the allowance of enhancement, in others to its denial.

Depreciation in value. Cases dealing with the question of whether the value of condemned property at the time of taking shall be ascertained with or without regard to depreciation in value occasioned by the public improvement are relatively few in number. The majority of such cases adopt the rule (favoring the condemnee) that depreciation shall not be taken into consideration in determining fair market value, but other cases (favoring the condemnor) announce a contrary result.

The arguments for and against the exclusion of depreciation in determining market value may be summarized as follows:

1. Depreciation due to a public improvement cannot inure to the benefit of the condemnor, since it is manifestly unjust to permit a condemning authority which brings about a diminution in property values by the prospect, imminence or threat of the exercise of its power of eminent domain to take advantage of depreciated values which proximately result from its action.

2. Fair market value at the time of taking must include and reflect depreciation due to a public improvement for the reasons that:

(a) The property owner cannot avail himself of increment in value due to a public improvement, and it follows as a necessary corollary that he cannot avail himself of depreciation ensuant on a public improvement.

(b) Determination as to whether depreciation was or was not caused by a public improvement would necessarily be based on speculation and hence must be excluded from consideration.

Proposed bill. The report concludes with a proposed bill based on laws in Maryland and Pennsylvania as well as on the Muskie Bill, S 1.

The proposed bill reads as follows:

The fair market value of property in a proceeding in eminent domain shall be the price for the highest and best use of the property which would be accepted by a seller willing but unobligated to sell and would be paid by a buyer willing but unobligated to buy in a voluntary sale, which such price shall be determined and ascertained as of the date of taking. Provided, that in the condemnation of property for a public improvement there shall be excluded from such price any appreciation in value proximately caused by such improvement and any depreciation in value proximately caused by such improvement. Provided further, that such appreciation or depreciation shall not be excluded where property is condemned for a separate improvement conceived independently of and subsequent to the original improvement.

The authors of the report feel that the bill, as modified to meet local needs, would clarify the contradictions in the present system of ruling on cases involved with changes in value resulting from the influence of a public improvement.

A STUDY OF THE LAND DEVELOPMENT AND UTILIZATION IN INTERCHANGE AREAS  
ADJACENT TO INTERSTATE 40 IN TENNESSEE

"A Study of the Land Development and Utilization in Interchange Areas Adjacent to Interstate 40 in Tennessee," by John D. Spears and Charles G. Smith of the University of Tennessee, Tennessee Highway Research Program, is the report of a project designed to check the relative economic and commercial development in areas near Interstate 40 as opposed to that in areas that the highway does not pass through.

The research was done to determine what industrial and commercial development, if any, occurred expressly because of the highway. Counties in Tennessee through which Interstate 40 passes were compared over a period of ten years with counties not touched by the highway.

Part one of the two-part study includes an investigation of the development of the interchanges as well as analyses of traffic capacities, and the economic impact of the interstate system. Part two includes an investigation of land values at interchange areas and criteria by which future interchange patterns may be predicted.

In their conclusions, the authors found that counties with interchanges had a significantly greater percentage increase in wages and salary disbursement and in manufacturing income during 1955-1965 than did counties that Interstate 40 did not pass through. The difference was most pronounced during the period from 1960-1965. Farm income declined in both groups of counties, but the decline was greater for the interstate counties. Total retail sales and gas station sales increased more in the non-interstate counties during the first five-year period, but during the second five-year period, the interstate counties increased their growth rate in this area to approximately that of the non-interstate counties.

The study of the effect of Interstate 40 interchange areas on counties in Tennessee can be utilized in projecting the effect in other States. The interstate interchanges are designed for traffic volumes expected to exist twenty years from the design date, and the success of the entire interstate program depends on the accuracy of traffic estimates for the twenty year period. This study adds data that can be used in such a projection of the growth and development rate at interstate exchange areas.

COMMUNITY RESPONSE TO THE DESIGN FEATURES OF ROADS - A TECHNIQUE FOR  
MEASUREMENT

Excerpted from the Abstract and Research Implications sections of a paper by Gary H. Winkel, Environmental Psychology Program, City University of New York.

Within recent years those who have responsibility for the design and implementation of changes in the physical environment have become increasingly sensitive to the desires of those who stand to be affected by such changes. Social scientists working in collaboration with transportation planners have begun to amass a body of information on various aspects of human response to the transportation system. If this and similar research is to be of value to decision-makers it is incumbent upon the researchers to provide data which are relevant to the concerns of the decision maker. When dealing with an entity as complex as the physical environment it is necessary to devise research strategies and techniques which will allow some degree of experimental control over the various elements which define the environment under study.



The paper describes a technique which was developed to determine user attitudes toward the design quality of various roadside developments located along urban arterials. Using a photoretouching technique on slides of the roadside it was possible to experimentally simulate the "removal" of selected portions of the roadside such as billboards, on premise and off premise signs, telephone poles and overhead wires while leaving the remainder of the "environment" intact. A total of 80 observers were asked to rate the roadsides on a set of semantic differential adjectives to obtain their judgments of the aesthetic quality of the roadside. In addition, eye movement recordings were obtained to determine how patterns of attention shifted depending upon the removal of various roadside elements. Finally observers were asked their opinions on a variety of urban problems to place the issue of roadside aesthetics in some context.

The findings of the research point to the importance of being able to secure a degree of experimental control over the elements which comprise a complicated visual environment. The data clearly indicate that observer response to selective changes in the roadside environment is neither random nor unpredictable. Throughout the course of the investigation observers were able to assess the effects of selected changes in the roadside and their responses were occasionally surprising both to the investigators and to the respondents. One needs only mention the dullness which occurred on the commercial route with the removal of all signs as well as the overhead wires and utility poles.

The importance of the context is also clearly demonstrated. Although the landscaped route did not even represent a close approximation to the art of the landscape architect, the observers felt that the presence of various man-made elements had a rather negative effect on aesthetic response. On the commercial route the design features which remained after the removal of selected portions of the environment were sufficiently dull to cause the observers to consider the total roadside as monotonous and ineffective. This finding again underscores the necessity to consider the entire roadside configuration when attempting to predict the outcomes of specific interventions.

The apparent existence of two distinctly different groupings of attitudes toward roadside aesthetics highlights one of the problems of research on consumer preference. This research has not been able to deal with the question of how or whether these orientations should be balanced off against one another. When the research was initiated, no clues existed to suggest that these attitudinal differences would be found. As a consequence, no provisions were made to investigate these differences in detail. This must await further research. At the moment it would appear that these differing conceptions of the functions of roadside design are diametrically opposed to one another. Still, it must be remembered that both groups of respondents were in agreement with one another regarding the basic monotony of both the roadsides. It would be quite interesting to know if both groups of people would agree with one another if a conscious effort were made to find roadside developments which were considered to be aesthetically pleasant. At the moment, the safest prediction would be that those who wished the roadside to be action oriented and visually exciting would be easier to please than those who expressed strongly negative attitudes toward the roadsides represented in the slides.

Another limitation of the present research is its concentration upon roadside aesthetics. The "complete highway" concept involves considerably more than aesthetics and it is clearly necessary to deal with the problem of highway safety as well as aesthetic enjoyment. Possibly the most telling example of the

potential conflict between these two issues is related to the finding concerning the removal of overhead wires and telephone poles. It will be recalled that the removal of these elements had the most positive effect on judgments of aesthetic preference. Yet, the eye fixation data strongly suggests that their removal may produce a deployment of attention away from the road itself to the roadside and the sky. Since the observers in this study were asked to simulate automobile passengers it would be premature to suggest that the removal of telephone poles and overhead wires would have a similar effect upon the patterns of eye fixation for drivers. But a nagging question remains and it would be extremely interesting to replicate portions of the present experiment under simulated driving conditions.

Of course, the present study represents only a beginning in the development of techniques which will allow transportation planners to approach their problems with a greater degree of sensitivity. With refinements it is hoped that data will be elaborated which will allow decision-makers a greater degree of flexibility in understanding the effects which various proposals will have upon the variety of behaviors which characterize the travelling public.



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